

## REPORT - PLANNING COMMISSION MEETING

January 22, 2004

February 12, 2004

May 13, 2004

**Project Name and Number:** GAME OR COMPUTING DEVICES AND ARCADES (PLN2004-00004)

**Applicants:** (1) Jimmy Lee d.b.a. Hyper Net and (2) City of Fremont

**Proposal:** To consider a Zoning Text Amendment to allow game or computing arcades less than 1,200 square feet in size in C-N Neighborhood Commercial Districts, subject to a Conditional Use Permit (Jimmy Lee d.b.a. HyperNet, Applicant). The Planning Division also proposes modifications to the applicable definitions and operational standards, to provide heightened standards and consistent terminology for game or computing devices and arcades in all districts.

**Recommended Action:** Recommend to City Council

**Location:** Citywide

**Agents of Applicants:** (1) Jimmy Lee and (2) City of Fremont Director of Planning

**Consultant(s):** None

**Environmental Review:** Exempt per the general rule in Section 15061(b)(3) of the CEQA Guidelines

**General Plan:** Neighborhood Commercial; other commercial and industrial designations

**Zoning:** C-N Neighborhood Commercial District; other commercial and industrial districts

**Public Hearing Notice:** Public hearing notification is applicable. A public hearing notice, including a one-eighth (1/8) page display advertisement, was delivered to *The Argus* on April 26, 2004, and published on April 29, 2004. In addition, six public hearing notices were mailed as a courtesy to interested parties.

**Executive Summary:** The Planning Commission considered this item on January 12 and February 22, 2004, and recommended its adoption to the City Council. Based on direction given by the City Council at its hearing on March 23, 2004, and subsequent discussions with the Police Department, staff has made the following changes to its recommendation:

- (1) The arcade regulations will apply to establishments with six or more computers, regardless of whether they are used predominately for playing games or for other legitimate purposes, as well as to establishments with six or more video games or similar game devices.
- (2) Establishments in C-N Neighborhood Commercial Districts will require a Conditional Use Permit, with the Planning Commission as the reviewing authority.
- (3) Establishments providing devices with Internet access must require identification and keep a log of users.
- (4) Establishments must prevent the viewing of adult material by minors.
- (5) The manager on-site must be at least 21 years of age, and all employees must be at least 18 years of age.
- (6) Full visibility would have to be maintained through front exterior windows at all times.
- (7) Karaoke booths, regardless of the number of booths in an establishment, would need windows and interior lighting to permit unobstructed viewing into the booth, and would be prohibited from having doors that lock.

**BACKGROUND:** The City of Fremont adopted most of its current regulations for amusement devices and arcades in 1983. The 1983 regulations:

- Increased from two to five the number of amusement devices (then mostly video games) allowed as accessory uses in certain types of establishments.
- Allowed amusement devices as accessory uses to be located in several types of establishments, not just, as formerly, in eating places.
- Defined amusement arcade as a use consisting of six or more amusement devices.
- Retained the requirement for a Conditional Use Permit or Zoning Administrator Permit for arcades in all the retail commercial and industrial districts in which they were allowed. The regulations continued not to allow arcades in C-N Neighborhood Commercial Districts.
- Allowed arcades outside the C-B-D or Central Business District only in conjunction with, and accessory to, some other type of business, such as a theater, bowling alley, skating rink, billiards establishment or sport or recreation club.
- At the recommendation of the Planning Commission, a requirement for a Conditional Use Permit was added for arcades in the C-B-D. Arcades also came to be allowed in the C-B-D only as accessory uses.
- Established criteria to be used for the evaluation of arcades.
- Established an annual enforcement fee for amusement devices to fund policing them.

In 2000, in conjunction with comprehensive new standards for Late Night and/or Amusement Uses the City adopted a graduated approach in which smaller arcades (less than 1,200 square feet in floor area) in the C-B-D as well as in C-C (Community Commercial) districts could be approved by the Zoning Administrator, reserving the full Conditional Use Permit requirement for larger arcades only.

Although establishments providing computers that may be used either for playing games or for other purposes most likely had not been contemplated when the original provisions for amusement devices and arcades were adopted, the Zoning Administrator subsequently determined that computers can satisfy the definition of amusement device, which is "any machine, device or video game intended to operate for the sole purpose of providing amusement upon insertion of a coin, slug or token in the machine, or by paying in advance of or after use..." (Fremont Municipal Code Section 8-2106.2). "Cyber cafes" or establishments whose primary purpose is to provide computers for the use of customers for general computing purposes, such as electronic mail, in addition to "computer game centers", have emerged as a new type of business in many cities in recent years and staff has received a number of inquiries about them. Although distinguished in this report, sometimes the terms "cyber café" and "computer game center" are used interchangeably.

In 2002, the Planning Commission approved PLN2003-00020, a Planned District Minor Amendment for an arcade establishment on Ardenwood Boulevard that includes Fremont's first approved computer game center as well as private karaoke booths. Many of the conditions of approval for that use came about at the request of the Police Department, including the requirements for exterior windows allowing viewing into the establishment, minimum interior and exterior lighting levels, prohibitions on loitering, minimum ages for employees, limitations on where money can be exchanged, and requirements for security personnel.

Also in 2002, the current applicant, HyperNet, submitted a Business Tax Application for an establishment, described as "computer retail and Internet services", in a C-N Neighborhood Commercial District. It came to the City's attention that the establishment is an Internet-based game center or arcade, which currently cannot be allowed in a C-N district. Community Preservation (code enforcement) staff has allowed the operation to remain open while the applicant has submitted and the City processes this Zoning Text Amendment and, if it is approved, a Conditional Use Permit for the specific operation.

On January 22, 2004, the Planning Commission conducted a public hearing on this item. The Commission asked staff to analyze data on calls for police service at existing computer game centers. Further consideration of the matter was continued pending completion of this analysis.

On February 12, 2004, the Planning Commission reviewed the information provided by staff on calls for police service (described below under "Calls For Police Service"). The Commission discussed a number of issues, questioning the need and rationale for the heightened standards that had been proposed for arcades citywide. The Commission approved a motion (6-1-0-0) to recommend adoption of the ordinance to the City Council.

On March 23, 2004, the City Council considered this item and expressed concerns about the following issues:

- (1) Uncertainty about the Police Department's overall level of comfort with the proposal
- (2) The appropriateness of locating arcades in C-N districts and of requiring only a Zoning Administrator Permit for arcades in such locations
- (3) Whether it would be feasible to determine whether computers are used for playing games 30 percent of the time or more
- (4) The risk that pornography might be viewed by or in the presence of minors
- (5) The need for regulations specifically ensuring surveillance of karaoke booths, regardless of the number of such devices in an establishment
- (6) The impact of arcades on Police Department resources

The Chief of Police expressed concern about the risk of people planning or committing crimes or compromising national security using communications over the Internet without authorities having any way to identify the perpetrators. The City Council continued the item to give Planning staff an opportunity to coordinate more closely with the Police Department and to consider the issues raised by the Council. Staff has completed the consultations and analysis that the Council requested and is bringing the revised proposal back to the Planning Commission for its consideration prior to proceeding to the City Council.

**Project Description:** The applicant's proposal as modified by staff now consists of the following elements:

**Conditional Use Permit in C-N Districts:** Arcades under 1,200 square feet in floor area would be allowed in C-N Neighborhood Commercial Districts subject to a Conditional Use Permit. Conditional Use Permits require the approval of the Planning Commission at a formal public hearing.

Staff discussed the question of allowing arcades to be approved in C-N districts with the Chief of Police and came to a consensus that properly managed arcades are appropriate uses in C-N districts. In fact, establishments making computers available to neighborhood residents can serve an important function for people of all ages, and especially young people, who have no computer or an insufficient number of computers at home. This increased availability of computers can help children, youths and adults reach their intellectual and economic potentials, and reduce the opportunity gap between families with differing levels of resources.

**Nomenclature and Definition:** Staff proposes to replace the term "amusement device" with "game or computing device" to clarify that it includes computer equipment. "Amusement arcade" would become "game or computing arcade". The changes proposed to the definition of amusement device are as follows:

"Amusement Game or computing device" shall mean any machine, mechanical, electronic or similar device, including any computer or video game, intended provided for customers to operate for the sole purpose of providing amusement, playing games or performing any kind of computing activity, such as, but not limited to, word processing, electronic mail, access to the Internet or World Wide Web, multimedia or conducting simulations, whether upon insertion of a card, cash coin, slug or token in the machine, or by paying in advance of or after use.

(a) An amusement game or computing device may be is generally one that is operated for use as a game, contest or for amusement, game or computing purposes only, and does not contain a pay-off device for the return of slugs, money, coins, checks, tokens or merchandise, unless the merchandise is dispensed only upon an exercise of skill.

(b) This definition includes pinball machines, crane games, video games, karaoke, other stationary audio and video devices (except jukeboxes as accessory uses in eating places), and computers, except computers used only for placing orders or similar purposes.

(c) This definition excludes ~~coin-operated~~ vending machines, photolaminating booths, billiard tables, bowling equipment, ~~peepshow devices~~, ~~coin-operated~~ game equipment worn on the person, amusement rides, devices in a carnival, state lottery games, health-monitoring machines, and jukeboxes as accessory uses in eating places.

Table 1.  
DEVICE TYPES INCLUDED AND EXCLUDED FROM GAME OR COMPUTING DEVICE DEFINITION

Included in the Definition of Game or Computing Device	Excluded from the Definition of Game or Computing Device
<ul style="list-style-type: none"> <li>• Computer</li> <li>• Card game simulating device</li> <li>• Crane game device (operated to win merchandise through an exercise of skill)</li> <li>• Fortune-telling machine</li> <li>• Jukebox other than as an accessory use in an eating place</li> <li>• Karaoke</li> <li>• Multimedia device</li> <li>• Pinball machine</li> <li>• Video game</li> </ul>	<ul style="list-style-type: none"> <li>• Billiards table</li> <li>• Blood pressure or other health monitoring machine</li> <li>• Board game, backgammon, cribbage or card game</li> <li>• Bowling equipment</li> <li>• Change machine</li> <li>• Darts set</li> <li>• Exercise equipment, physical, such as treadmill, body-building equipment or climbing wall</li> <li>• Jukebox as an accessory use in an eating place</li> <li>• Laser tag or paintball equipment</li> <li>• Lottery machine, California State</li> <li>• Ride, amusement</li> <li>• Shuffleboard</li> <li>• Tabletop football, foosball or similar game</li> <li>• Vending machine</li> </ul>

The proposed language clarifies the definition in a number of ways. For the most part, the expanded definition is not intended to change policy. The relationship of the revised definition to current policy is described in greater detail below.

Many of the devices excluded from the definition of game or computing device deserve some regulation. In many cases these devices (for instance amusement rides, such as bumper cars) would be associated more with amusement parks than with arcades; other types of establishments, such as bowling alleys and billiard halls are

recognized freestanding uses in their own right. These uses require discretionary approval and staff would recommend conditions of approval appropriate to the specific project. The scope of the current proposal, however, is limited to the particular category of uses known as arcades, understood to include cyber cafes (computer centers used primarily for e-mail, browsing the World Wide Web or other purposes, but not primarily for playing games), as well as computer and video game centers and other uses with six or more game or computing devices.

As well as modifying the definition of amusement (game or computing) device, staff proposes to modify the definition of arcade as follows:

"Amusement or video game or computing arcade" shall mean any premise where establishment (not to include a carnival) in which six or more amusement game or computing devices<sup>1</sup> are operated, except:

- (a) A principal business service<sup>2</sup> or educational service<sup>2</sup> use providing computers, but no other game or computing devices, for customers to operate for purposes accessory to the principal business or educational use.
- (b) A hotel providing computers for the use of hotel guests in a business center, in private guest rooms, or both.

Discussion of the various aspects of the definitions follows.

*Computers:* The main policy change from the existing definition is that computers would be included in the definition regardless of whether they are used for games. There are two main reasons for this. First, it is not clear how the City would ascertain what proportion of the time a computer is used for games (or "amusement") rather than for other purposes. Although Fremont does not currently have any cyber cafes, they have become established in many communities and may well come to Fremont. If they do, it may be disputable whether computers in a particular establishment are used to any substantial degree for playing games.

The second main reason for including computers regardless of whether they are used for games is that the land use and law enforcement issues associated with cyber cafes and game centers are similar, with the availability of general access to the Internet in these establishments creating additional issues. The Police Department especially has emphasized these issues about Internet access. A number of California cities have studied some of the issues associated with cyber cafes and have adopted regulations specifically to address them, regulations that staff studied in its development of this proposal. In addition, under "Internet Access" below, staff addresses issues associated specifically with establishments providing general Internet access.

*Jukeboxes, Karaoke And Other Media Players:* Jukeboxes as accessory uses in eating places are specifically exempted. They typically make up an incidental part of the ambience of an establishment. Karaoke, however, would not be included in this exemption, since karaoke is used as the central focus of an entertainment activity that in and of itself can draw crowds to an establishment. Regulations to ensure adequate surveillance of private karaoke booths (regardless of number) are included below under "Karaoke Booths".

In addition, since staff now proposes to regulate computers along with amusement devices, it is not possible to make a blanket exemption for devices that play music recordings or other media. Computers, in fact, are now the devices most commonly used for copying and editing audio, still images and video, and are often used for recording and playing the media as well.

*Adult Arcades:* Staff proposes to add language clarifying that any establishment with "adult-oriented" game or computing devices (those involving the display of videos, photographs or other images 30 percent or more of which emphasize nudity or sexual activity) would not be allowed unless this use is a specific part of the approval and subject to the regulations applicable to adult-oriented businesses. The obsolete term "peepshow device" can be deleted from the ordinance.

The 30% threshold in the adult-oriented business ordinance is intended to protect the constitutional rights of adults to free speech or privacy in cases where no significant adverse land use or law enforcement effects would be anticipated. Because this existing ordinance does not regulate incidental viewing of adult material, additional measures are needed to prevent minors from being exposed to any such material in establishments that provide general access to the World Wide Web. These measures are described below under "Internet Access".

*Billiards and Other Tabletop Games, Shuffleboard, Bowling, Darts etc.:* The Revenue Division, which historically enforced the amusement device regulations, has considered billiard tables to be amusement devices when money was charged for the tables' use but not otherwise, but has not considered bowling equipment to constitute amusement devices. Although billiards and bowling establishments raise some of the same issues as do arcades proper, there are also differences that are outside the scope of this proposal. Billiards and bowling establishments are not normally thought of as arcades and are not consistently identified as such throughout the Fremont Municipal Code. Staff proposes to exclude these games from the definition of game or computing device. Similarly, foosball and similar games, as well as games that are neither mechanical nor electronic in nature, such as shuffleboard, board games, backgammon, cribbage or card sets, horseshoes, darts and so forth, would be excluded.

*Health-Monitoring And Exercise Equipment:* Health (for example, blood pressure) monitoring machines are explicitly exempted under the ordinance. Physical exercise equipment such as treadmills and weight-lifting machinery has not been regulated under the amusement device ordinance either. Staff proposes to clarify that all such equipment is exempt.

*Lottery:* State law regulates the State lottery extensively. It is proposed therefore that lottery and any similar State-regulated game devices be exempted from the game and computing device ordinance.

*Portable Equipment:* The Zoning Administrator has previously determined that equipment for laser tag (and by extension, paintball) does not constitute an amusement device. The proposed new language will codify that determination.

*Rides:* Establishments featuring motorized or trolley vehicles (for instance, bumper cars), mechanical bulls or ponies, and other amusement rides for adults or children have not been considered arcades. The proposed new language will codify that determination.

*Vending Machines:* The ordinance has a specific exemption for vending machines or machines with "pay-off devices for the return of slugs, money, coins, checks, tokens or merchandise". Staff believes that this exemption could apply even when the machine dispenses merchandise (for instance, a gumball) in an entertaining manner. Similarly, a machine that crushes and reshapes the coin put into it and returns it to the purchaser is like a vending machine and is not a game or computing device.

Photo laminating devices (coin-operated devices that laminate photographs) are no longer common and staff proposes to strike the reference to them from the ordinance as unnecessary. Photo booths have become common, however, so a reference to these booths will be added. These uses are excluded from the definition of game or computing device since they are similar to vending machines in providing a product for a fixed price. Change machines are clearly also not game or computing devices.

Staff believes that "crane games" are not exempt. In these games, merchandise is won when crane equipment retrieves the merchandise, but only when it is operated in a particularly skillful manner. The requirement for special skill to obtain a product from these devices distinguishes them from vending machines.

*Carnivals:* Game devices in traveling circuses or carnivals would not be considered game or computing devices. Such devices are extensively regulated under the carnival ordinance.

*Application to Establishments Offering Wireless Internet Access:* Establishments providing access to the Internet to customers who bring laptop computers equipped for such access would not be considered game or computing arcades unless the establishments provide computers for their customers to use.

**Cover Charges:** Staff proposes not to differentiate between games for whose use the user pays on a per-game or per-hour basis from those included for free in an establishment for which the user pays a cover charge. Although the Revenue Division has made this distinction in the past, it does not seem to represent a significant difference from a land use or law enforcement perspective.

**Exceptions For Business and Educational Service Uses:** Photocopying or other business service uses and educational services (including libraries) providing computers as accessory uses would be excluded from the definition of arcade. The type of computer use that occurs in these establishments is typically different than that which occurs in cyber cafes. "Accessory uses" are uses "subordinate to or part of the principal use ... and serving a purpose customarily incidental to the principal use" (FMC Sec. 8-2199.19.2). Allowing this exclusion only when the computers are "accessory uses" (as determined by the Zoning Administrator) will prevent establishments from evading regulation merely by offering computer classes in addition to computer rentals. The computer access would have to be part of an organized program of instruction.

Similar to a principal business service use, business centers in hotels for the use of guests would not be considered arcades. Of course, computers provided in a private guest room in a hotel would also be excluded, as computers in any private place would be.

**Interpretation:** A variety of issues of interpretation of the new ordinance may be anticipated to arise in coming years. As technology and marketing evolve, for instance, devices excluded from the definition may come to be used in a manner that effectively makes them game or computing devices. In such a case, the approving body would have the power to determine how to apply the ordinance based on the totality of the language in the definition.

The clarifications discussed above are included in the proposed new language, which is given above and in Sections 6 and 7 of Exhibit "A".

**Principal vs. Accessory Use:** The Zoning Ordinance currently allows amusement or game devices and arcades only as accessory uses to another principal use. This requirement was adopted in 1983 with the rationale that the principal use would provide some monitoring of the devices. Staff now proposes to allow freestanding arcades since extensive new proposed operational requirements address monitoring.

Small numbers of game or computing devices (up to five) would still be allowed as accessory uses, without any use permit being required. Staff proposes, however, to allow the devices in conjunction with any retail use. See Exhibit "A", Section 31.

**Internet Access:** At the direction of the City Council and in consultation with the Police Department, staff has developed requirements for arcades with devices with access to the Internet (including the World Wide Web) that will ensure identification of customers using such devices, to prevent them from being used anonymously for unlawful purposes, as well as secure the customers' agreement not to view adult material in the presence of minors. The requirement for identification of persons using the Internet may break new ground; no other California city is known to have adopted such a requirement.

As proposed, arcades providing devices with Internet access will have to require a photo ID and keep a log of such customers. Besides identifying the customers, the log must state that adult materials may not be viewed by or in the presence of minors, and each customer must sign and acknowledge this requirement. Since minors may not have passports, driver's licenses or other photo IDs, provision has been made for minors to be identified by their parent or guardian. The log would have to be kept for at least 120 days, after which it would be destroyed.

Law enforcement personnel do not have the authority or resources to monitor specific computers' Internet or Web-browsing activities. They may, however, in the course of on-line research, obtain evidence of a crime being planned or committed on-line from a given computer (based on its "IP" or Internet protocol address). They can then obtain a warrant and learn the location of the computer from the Internet service provider. If such a computer were located in an arcade in Fremont, the police would then be able to obtain an additional warrant ordering the surrender of the log

in order to learn the identity of the perpetrator. Such crimes on-line can include fraud, extortion, improper activities between adults and minors, or contemplated acts of terrorism.

The details of the proposed requirement are as follows:

- No arcade shall allow a customer access to the Internet until the customer has presented a valid photo ID and has signed in, and arcade staff has examined the photo ID and verified the customer's identity and age.
  - *ID requirements:*
    - A photo ID issued by a government agency is acceptable.
    - In the case of a student in elementary or secondary school, a photo ID issued by the school is acceptable.
    - A photo ID issued by the arcade is acceptable, under the following conditions:
      - No arcade shall issue any such photo ID unless it first inspects the customer's school or government photo ID or, in the case of a person under 18 years of age (a "minor") without such photo ID, on the request of the minor's parent or guardian made in person and in writing, and after inspecting the parent's or guardian's school or government photo ID.
      - Any arcade issuing such photo ID shall keep a facsimile of the photo ID presented by the customer, parent or guardian, as the case may be, and, in the case of a minor, the written authorization of the parent or guardian, for the life of the arcade-issued photo ID, and shall surrender it upon request to authorized law enforcement personnel.
  - *Sign-in requirements:*
    - The customer shall sign a written log that indicates acceptance of the Internet access policy described below and that includes the customer's true name; the type, serial number and expiration date of the identification document presented; the date and time of using a device with access to the Internet; and the specific device used.
    - Upon surrendering the use of a device with access to the Internet, the customer shall sign out, indicating the time.
    - The log shall be kept for 120 days and shall be surrendered on request to authorized law enforcement personnel.
    - After 120 days such log shall be destroyed.
- No arcade shall permit the viewing of matter distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas by or within view of any person less than 18 years of age. In order to allow adults to view such material, there would have to be a separated area, or separate times, for adults. Any such separate area would have to be visible from outside the establishment without the video displays actually being visible.
- In no case shall a game or computing arcade be operated or used so as to constitute an adult-oriented business unless the City has specifically approved a conditional use permit pursuant to the Fremont Municipal Code requirements for adult-oriented businesses.

**Other Standards:** As requested by the Police Department, staff proposes the following other new requirements:

*Age:*

- A manager 21 years of age or older shall be on-site during business hours at all times. No employee shall be under 18 years of age.

*Lighting and Surveillance:*

- Any such establishment shall have exterior storefront windows that allow for surveillance of the entire establishment. No blind, sign, poster or other matter or tinting on the window, nor any interior wall, shall



block an unobstructed view of the entire interior of the establishment. An exception may be allowed if the operator provides equivalent means for surveillance from outside the establishment, for instance, by automatic video monitors, to the satisfaction of the Police Department.

- Exterior lighting shall be maintained at a level of at least one foot-candle at any exterior public entry and in adjacent parking areas for 30 minutes after the establishment closes or until the last patron leaves the vicinity.
- Interior lighting shall be established and maintained using no less than sixty watts per hundred square feet (0.6 W/ft<sup>2</sup>).
- Payment and providing change shall occur only at automated machines or at desks designated in the conditional use or zoning administrator permit.

*Loitering:*

- All persons waiting for service shall wait within the establishment. No exterior waiting or loitering shall be allowed. No waiting list shall be maintained that exceeds the seating capacity of the interior waiting area.
- "No Loitering" signs of a design authorized by the City shall be posted at locations selected by the Police Department.

*Miscellaneous:*

- The walls separating any arcade that provides audio or amplified sound from other tenants shall achieve a minimum sound transmission coefficient (STC) sound rating of 40-50.
- Adequate trash and recycling facilities shall be maintained within the establishment for the use of customers.
- A copy of the conditions of approval shall be kept on the premises and made available upon request to authorized enforcement personnel. Conditions pertinent to customer behavior shall also be posted at a prominent location within the establishment.

*Additional Requirements That May Be Imposed:*

The following additional requirements, related to security and surveillance, have been imposed on arcades in the past at the request of the Police Department and may continue to be appropriate for arcades of a certain size under some circumstances:

- Adequate security personnel shall be provided and shall be responsible to prevent violations of law and to enforce the prohibitions on waiting outside and loitering and to ensure that all patrons leave the property within thirty (30) minutes of the establishment's closing.
  - The security personnel shall be licensed as required by state law and shall be uniformed in a manner to distinguish them clearly from local public law enforcement or other government personnel.
  - One or more persons, not to include the security guard, shall be responsible for admission to the establishment.
- Automatic video surveillance equipment shall be installed and operated allowing the on-site manager to monitor and record activities throughout the establishment in real time. The recordings shall be kept for at least one month and shall be surrendered, upon request, to authorized law enforcement personnel.

See Exhibit "A", Section 31. Nothing in the proposed amendments would prevent the City from imposing additional conditions as may be necessary under particular circumstances to ensure compatibility with nearby land uses and to minimize impacts on public services.

**Prohibited Uses:** Language would be added clarifying that illegal gambling cannot be conducted in a game or computing arcade and that, as discussed above, adult-oriented business activity would be prohibited unless specifically authorized subject to the regulations applicable to such uses.

**Nomenclature:** Staff proposes to standardize the nomenclature used in this regard in the Fremont Municipal Code. For instance, although the Code clearly states that "amusement devices" may or may not be coin-operated and are regulated the same in either case, the Code today frequently identifies the devices as "coin-operated amusement devices". Staff proposes to delete the term "coin-operated". In addition, the Code inconsistently refers to arcades either as "amusement or video game arcades" or as "coin-operated amusement devices in excess of five". Now that computers will be regulated regardless of whether they are used for playing games, staff proposes to refer to the devices consistently as "game or computing devices" and arcades as "game or computing arcades".

**Karaoke Booths:** Staff proposes to require karaoke booths, or other booths or rooms in which entertainment is available, to be open to surveillance. Specifically, there would have to be at least one 3' x 4' clear glass window located in the center of the wall of a 100-square foot booth. In the case of a larger booth; in a case where the applicant prefers not to center, or cannot center, the window; or where circumstances would prevent one window of such a size from providing a clear view of the interior of the booth, additional windows would be required. A minimum 60-watt light source would be required per 100 square feet, and locking doors would be prohibited. These specific regulations would not apply to booths in adult arcades or massage rooms, which are subject to other requirements.

**Karaoke in Bars:** Bars with live entertainment are classified as "nightclubs" and require a conditional use permit. Staff proposes to clarify that a bar with a single karaoke would not be a nightclub, just as a bar with a single instrumental musician is not a nightclub. The changes would read as follows:

"Nightclub" shall mean a drinking place ~~which includes an area in which patrons may dance, that features or accommodates dancing or which~~ provides live entertainment, not including entertainment by a single, ~~instrumental musician performing instrumental music only or entertainment consisting of the operation of a single karaoke.~~<sup>1</sup>

**Replacement of Existing Sections With New Ones:** Because of the change in nomenclature from "amusement devices" to "game or computing devices", and in order for the sections containing the terms to continue to appear in alphabetical order in various lists of uses in Article 1 (Definitions) and Article 21.3 (Special Provisions Applying to Miscellaneous Uses) of the Zoning Ordinance, existing sections will be deleted, and new sections with new section numbers added, in their proper alphabetical location in the Code. Similarly, existing lists of uses in the articles addressing various districts, which used to be in alphabetical order, will be re-alphabetized to correct the degradation of alphabetical order that has occurred as new uses have been added over the years. To keep the exhibit setting forth the proposal intelligible, these affected sections will be also deleted and replaced with entirely new sections. Incidental cleanup of language is also proposed, consisting of:

- Correcting an error in the provision for nightclubs in industrial districts that makes the total number allowed in all industrial districts (a total of two) unclear
- Using the recently adopted definition of "slaughter" in lieu of confusing terms derived from the Standard Industrial Classification (S.I.C.) Manual, for industrial operations in the G-I district involving slaughter of animals
- Making minor rearrangements of words to improve clarity and ease of reference
- Correcting terms derived from the S.I.C. Manual with the correct references
- Removing the notes currently located at the end of the special regulations for arcades to the end of Article 21.3, consistent with the practice elsewhere in the Zoning Ordinance
- Removing redundancies and inconsistencies

None of these modifications will change policy or the substance of existing regulations.

**Grace Period:** In its research on computer game centers, staff identified two such centers existing in Fremont that have not secured use permits in addition to the current applicant's center. In order to avoid creating excessive hardships for any of these businesses, staff proposes a grace period. Existing arcade businesses would have three months from the time this ordinance is adopted to apply for a use permit, and the City would explicitly notify them of the requirement for a use permit. No action by the Planning Commission is needed.

#### Project Analysis:

- **General Plan Conformance:** The current proposal would allow game or computing arcades where the General Plan land use designation is Neighborhood Commercial. The proposed project is consistent with the Neighborhood Commercial General Plan designation because only arcades under 1,200 square feet in floor area would be allowed. Arcades at that scale are likelier to serve the surrounding residential neighborhood and less likely to have adverse impacts on the neighborhood.

The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Land Use Policy LU 2.24 Neighborhood commercial areas are smaller shopping areas which provide a variety of convenience goods and services to a surrounding neighborhood....

Land Use Policy LU 2.23 All neighborhood-serving commercial uses are generally allowed ...

- **Zoning Regulations:**

**Location in C-N Districts:** Currently arcades are allowed in all commercial and industrial districts except the C-O Administrative Office and C-N Neighborhood Commercial. Where allowed, they require a Conditional Use Permit, except for arcades up to 1,200 square feet in floor area in the Community Commercial and C-B-D Central Business Districts. In these latter situations, a Zoning Administrator Permit is required.

Table 2: ARCADES BY DISTRICT	
District	Allowed?
C-O	Not allowed
C-N	Not allowed if $\geq 1,200$ sq. ft. CUP if $< 1,200$ sq. ft.*
C-C	CUP if $\geq 1,200$ sq. ft. ZAP if $< 1,200$ sq. ft.
C-B-D	CUP if $\geq 1,200$ sq. ft. ZAP if $< 1,200$ sq. ft.
C-T	CUP
C-R	CUP
I-L	CUP
I-R	CUP
G-I	CUP

\* Underscore represents proposed change

**Legend:**

CUP Conditional Use Permit Required  
ZAP Zoning Administrator Permit Required

Staff believes that allowing small arcades in the C-N Neighborhood Commercial District subject to a Conditional Use Permit is consistent with the general scheme under which arcades are regulated currently. The requirement for a Conditional Use Permit will provide a high level of scrutiny to arcade establishments proposed for C-N districts and will increase the assurance they will be adequately integrated into the neighborhood. A high level of scrutiny is justified because of the nature of Neighborhood Commercial districts.

**Calls for Police Service at Arcades:** The Fremont Police Department reported that calls for service associated with computer game centers (which are the only type of arcade currently known to be located in Fremont) range from 0 to 4 per year per center, mostly to do with allegations of smoking or sales of marijuana and sometimes burglary, theft or receipt of stolen property. A report of a beating was made in connection with one establishment. The Newark Police Department reported that a computer game center near a high school in Newark generated 11 calls for service in 2003, of which 6 related to possible burglary attempts and 3 to pedestrian stops, with one disturbance of the peace and one assault.

Fremont Police indicate that, while there may be disagreement over the desirability of some game centers as an environment for children, calls for service generated by properly managed computer game centers or arcades in general are not out of proportion to those generated by other establishments, and are most related to the amount of customer traffic, especially traffic at night.

**Recommended Provisions Applying to Arcades Generally:** The changes to the Zoning Ordinance proposed by staff will heighten the standards for arcades generally, incorporating requirements that the Police Department has requested based on its experience with game arcades and reports about cyber cafes in other cities. The reason for these heightened requirements is that arcades tend to be places where young people, congregate, and there is evidence (for instance, from the cities of Santa Ana and Garden Grove) that nuisances associated with loitering, truancy, noise, litter and petty crime have tended to arise in arcades that were not properly managed. The age requirements for managers and other employees are based on the Police Department's long experience with the level of maturity needed to manage establishments that may cater to younger customers. Staff believes that all the proposed standards are appropriate and serve to prevent these nuisances from arising, facilitating surveillance and helping to ensure compatibility between game and computing arcades and surrounding land uses.

**Effect on Industrial Moratorium Area:** It should be noted that the I-R and G-I districts and a portion of the I-L district are subject to a moratorium for one year beginning last November that prevents arcades and other assembly uses from locating in those districts. Although terminology changes are proposed in the attached ordinance in the event the moratorium is lifted or expires without a permanent prohibition, no policy change with regard to these uses in industrial districts is proposed at this time.

**Environmental Analysis:** This project is exempt from review under the California Environmental Quality Act (CEQA) under the general rule in Section 15061(b)(3) of the CEQA Guidelines. This rule provides that CEQA applies only to projects that have the potential to cause a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

The effects of this project on the environment would be of two types. First, the project would allow arcades not exceeding 1,200 square feet in floor area to locate in C-N Neighborhood Commercial Districts. Any facilities of that size would be categorically exempt from CEQA under Section 15303 of the CEQA Guidelines (Class 3) pertaining to new construction or conversion of small structures. Second, the project would impose additional operational standards on arcades and karaoke booths. The imposition of these standards would have even less of an adverse effect on the environment and are intended to minimize the arcades' impacts. It can be argued that the categorical exemption of Section 15308 of the CEQA Guidelines (Class 8), pertaining to actions by regulatory agencies for the protection of the environment, also applies in the case of the heightened operational standards.

**Outreach:** Staff made field visits to the existing Fremont businesses that had been identified as computer game centers, as well as some such centers outside Fremont, and, whenever possible, inquired about their business operations and described this proposed ordinance to the on-site managers. Staff also sent a notice to the computer game centers, some with use permits and some without. The notice described the existing ordinance and the proposed changes and invited the owners to a meeting with staff to discuss them.

In the development of this ordinance, staff has also consulted with businesses and institutions intended to be exempt from this ordinance, namely public libraries, photocopying centers and several hotels. Notice of the Planning

Commission hearing was also sent to all interested parties, including all Fremont businesses believed to constitute arcades, and copies of the staff report and proposed ordinance were sent upon request.

**Response from Agencies and Organizations:** Staff has not received any expressions of concern over this project from any external public agencies or other types of organizations.

**ENCLOSURES:**

- Exhibit "A" (Zoning Text Amendment)
- HyperNet Project Description
- Planning Commission Report and Minutes of January 22, 2004
- Planning Commission Report and Minutes of February 12, 2004
- City Council Report and Minutes of March 23, 2004

**RECOMMENDATIONS:**

1. Hold public hearing.
2. Find PLN2004-0004 is exempt from review under the California Environmental Quality Act per the general rule in Section 15061(b)(3) of the CEQA Guidelines.
3. Find PLN2004-00004 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated in the staff report.
4. Find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment PLN2004-00004 in order to accommodate the needs of residents with limited access to computers and other users of game or computing arcades while enhancing the suitability of arcades as an environment for young people and mitigating their impacts on law enforcement and on surrounding uses.
5. Recommend PLN2004-00004 to the City Council in conformance with Exhibit "A" (Zoning Text Amendment).